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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/406,666 09/27/99 PALINKAS

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EXAMINER

RAYMOND D THOMPSON
UNIROYAL CHEMICAL COMPANY INC
WORLD HEADQUARTERS
MIDDLEBURY CT 06749

PETRAVICK, M	
ART UNIT	PAPER NUMBER

3671
DATE MAILED:

12/12/00

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/406,666

Applicant(s)

PALINKAS, RICHARD L.

Examiner

Meredith C Petravick

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claims ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 18) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

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DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "mounting member" in claim 1 must be shown or the feature canceled from the claim. No new matter should be entered.

Specification

2. The disclosure is objected to because of the following informalities:
 - on page 1 line 15, "The protect" should be --To protect --
 - on page 2, line 10, "heated" should be -- heat--

Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1-2, 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kilby 3,667,797.

Kilby discloses the claimed device including:

- a pad (10)
- a tree shaking apparatus (12)
- a pair of opposing sections (outer ends of 10 next to 52)
- a bore (for bolts 57)
- a mounting member (57)
- a resilient polymeric web (middle portion of 10)
- two apertures (52)

However, Kilby discloses horizontal bores for the mounting members instead of longitudinal bores. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the bores longitudinal instead of horizontal, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

5. Claims 1-2, 5, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kilby in view of SU 1,329,666.

Kilby discloses the claimed device including:

- a pad (10)
- a tree shaking apparatus (12)
- a pair of opposing sections (outer ends of 10 next to 52)

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- a bore (for bolts 57)
- a mounting member (57)
- a resilient polymeric web (middle portion of 10)
- two apertures (52)

Kilby also states that any suitable means may be used to mount the pad. (column 3, lines 43-45)

However, Kilby discloses horizontal bores for the mounting members instead of longitudinal bores.

Like Kilby, SU 1,329,666 discloses a pad for a tree shaker. SU 1,329,666 uses longitudinal bores and mounting members. (see figure)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to mount the pad of Kilby longitudinally as in SU 1,329,666, as an alternate suitable mounting means.

6. Claim 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kilby in view of SU 1,329,666 as applied to claim 1 and further in view of Favor, 3,771,301.

The combination discloses the claimed device and suggests that pads should be made of resilient material. (column 1, line 44 - 47) However, the combination does not disclose the exact material.

Like the combination, Favor discloses a pad for the jaws of a tree shaker. The pad is made of polyurethane, which is an elastomer material. (column 8, lines 65-67)

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the pad of the combination from polyurethane as in Favor, as one type of resilient material used in a pad.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kilby in view of SU 1,329,666 as applied to claim 1 and further in view of Korthuis 5,666,796.

The combination discloses the claimed device and suggests that pads should be made of resilient material. (column 1, line 44 - 47) However, the combination does not disclose the exact material.

Like the combination, Korthuis discloses a machine for harvesting fruit including a tree-engaging portion. Korthuis provides a resilient polyethylene pad around the beaters of the machine. (column 2, lines 44-46) This pad protects the beaters.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the pad of the combination from polyethylene as in Korthuis, as one type of known resilient material used as a pad for engaging trees.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meredith Petravick whose telephone number is 703-305-0047.

The examiner can normally be reached on Monday-Thursday from 7:00 a.m. – 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at 703-308-3870.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 703-305-1113. The fax number for this Group is 703-305-3597.



Thomas B. Will
Supervisory Patent Examiner
Group Art Unit 3671

MCP
Dec. 6, 2000